

MIEARS LAW

Offices in Grapevine and Bonham, Texas

Steven R. Miears, P.C.

FILED
COURT OF CRIMINAL APPEALS
6/12/2017
ABEL ACOSTA, CLERK

Steven R. Miears

Sheryl A. Miears



June 6, 2017

Mr. Abel Acosta
Clerk of the Texas Court of Criminal Appeals
P.O.Box 12308
Capitol Station,
Austin, Texas 78711

Via: E-filing

In Re: Christopher James Holder v. The State of Texas; PD-1269-16

Dear Mr. Acosta:

Yesterday, June 5, 2017, the U.S. Supreme Court granted review in CARPENTER V. UNITED STATES. The Court's website describes the issue granted for review:

16-402 CARPENTER V. UNITED STATES DECISION BELOW: 819
F.3d 880 CERT. GRANTED 6/5/2017

QUESTION PRESENTED: In this case, as in thousands of cases each year, the government sought and obtained the historical cell phone location data of a private individual pursuant to a disclosure order under the Stored Communications Act (SCA) rather than by securing a warrant. Under the

206 East College
Suite 200
Grapevine, Texas 76051
817-915-4006 voice
817-410-4783 fax

POB 736
211 North Main
Bonham, Texas 75418
903-640-4963 voice
903 640-4964 fax

SteveMiears@msn.com
SherylMiears@msn.com

SCA, a disclosure order does not require a finding of probable cause. Instead, the SCA authorizes the issuance of a disclosure order whenever the government "offers specific and articulable facts showing that there are reasonable grounds to believe" that the records sought "are relevant and material to an ongoing criminal investigation." 18 U.S.C. § 2703(d). As a result, the district court never made a probable cause finding before ordering Petitioner's service provider to disclose months' worth of Petitioner's cell phone location records. A divided panel of the Sixth Circuit held that there is no reasonable expectation of privacy in these location records, relying in large part on four-decade-old decisions of this Court.

The Question Presented is: Whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user over the course of 127 days is permitted by the Fourth Amendment. <https://www.supremecourt.gov/qp/16-00402qp.pdf>.

The PDR to this Court in Holder v. State, PD-1269-16, raises issues similar to Carpenter. Specifically, grounds three and four:

Ground Three:

The Court of Appeals erred in holding the State's petition to obtain the Appellant's cell phone records set forth the "specific and articulable facts" required by federal law under 18 U.S.C. section 2703(d). Holder v. State of Texas, PDR, p. 22.

Ground Four:

The Court of Appeals erred in holding the State's acquisition of Petitioner's historical cell phone records under an order issued under the federal stored communications act without a showing of probable cause in the petition was reasonable under the guarantees of privacy in Article I section 9 of the Texas constitution. Holder v. State of Texas, PDR, p. 26.

Petitioner writes to bring this development to the attention of the Court, and as a supplement to Holder's PDR.

Respectfully,

/s/ Steve Mears

Steve Mears
Lawyer

cc. via e-filing to the Collin County District Attorney's Office